132-510

132-578

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~206~~. 122

THE SINGER MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

KATIE RAHN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED OCTOBER 5, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 396.

THE SINGER MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

KATIE RAHN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 6, 1889.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Katie Rahn, plaintiff, and The Singer Manufacturing Company, defendant, a manifest error hath happened, to the great damage of the said The Singer Manufacturing Company, as is said, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of March, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth year.

Seal U. S. Circuit Court, Dist. of Minnesota.

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

2 & 3 UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

The answer of the judges of the circuit court of the United States for the district of Minnesota, in the eighth circuit, in within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States of America within mentioned, in a certain schedule to this writ annexed, marked A, as within it is commanded.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, in the district of Minnesota, this 13th day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh year.

Seal U. S. Circuit Court, Dist. of Minnesota.

OSCAR B. HILLIS,
Clerk U. S. Circuit Court, Dist. of Minnesota.

4 SCHEDULE A.

United States Circuit Court, District of Minnesota. At Law.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Pleas before the honorable the judges of the circuit court of the United States of America, at the September adjournment of the June term of said court, held, in the city of Saint Paul, in said district, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th year.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the 20th day of January, A. D. 1885, came the defendant above named, by its attorneys, and filed in the clerk's office of said court a return from the United States court; which said return is in the words and figures following, to wit:

Return from the State Court.

STATE OF MINNESOTA,
County of Hennepin.

District Court, Fourth Judicial District.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

5 *Complaint.*

The plaintiff complains and alleges:

1st. That during all the time hereinafter mentioned the defendant was a corporation duly organized and created under the laws of the State of New York.

2d. That said defendant is engaged in the business of manufacturing sewing machines and selling the same by agents who deliver the same in wagons.

3d. That said defendant has a general office in this State for the transaction of its business herein.

5th. That on the 10th day of April, 1884, the plaintiff was walking over the crossing which was and is intended and designated for the use and convenience of foot passengers, which aforesaid street and crossing are in the city of Minneapolis and county aforesaid.

6th. That the defendant was then the owner of a wagon and two horses which were then being driven along said Franklin avenue in the possession of defendant's servant; that said servant while en-

gaged in his employer's business, on the day aforesaid, with force and arms drove the said wagon in which the said servant was then and there driving in and along said Franklin avenue and upon the said crossing, wrongfully and negligently, with great force and violence, upon and against the said plaintiff while she, the said plaintiff, was crossing along and over the said crossing of said Franklin avenue, and then and there, by reason of said careless, reckless, and negligent driving, the plaintiff was cast and thrown down upon said crossing with great violence; by reason whereof the plaintiff suffered and sustained many and grevious wounds and bruises upon her body and was much frightened and alarmed; that her arms and shoulders were severely injured, and that she was injured across her back, spine, and kidneys and her whole physical and nervous system shocked; that with the aid at hand this plaintiff, with much difficulty and in great pain, reached her home, near at hand, and for the next ensuing three months was confined to her bed, solely caused by the injuries received as aforesaid.

7th. And this plaintiff further shows the court that ever since said injury she has been unable to attend to her business, to wit, dressmaking; but in consequence thereof she has much of the time been sick and lame and delayed in and about the work of her business, and plaintiff believes and alleges the fact to be that said injuries are of a permanent character, and that she will never entirely recover therefrom.

6 8th. That said plaintiff has since said injury and solely therefrom *has* suffered great pain, anguish, and bodily suffering and mental anxiety, and still suffers as aforesaid, solely from said cause, to her damage in the sum of $20,000.

That in consequence of said injury plaintiff has been obliged to incur great expense, and to contract large liabilities for physicians' services and drugs, and she has needed and now needs constant attention and nursing, all to her further damage of $1,000.00.

Wherefore plaintiff demands judgment against said defendant for the sum of $21,000.00, with interest since the first day of August, 1884, and for the costs and disbursements of this action.

C. A. EBERT,
Plaintiff's Attorney, Minneapolis, Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Katie Rahn came before me personally and, being duly sworn, doth say that she is the plaintiff in the above-entitled action; that the foregoing pleading is true of her own knowledge, except as to those matters therein stated on her information and belief, and as to those matters that she believes it to be true.

KATIE RAHN.

Subscribed and sworn to before me this 9th day of August, A. D. 1884.

[NOTARIAL SEAL.] HENRY EBERT,
Notary Public, County of Hennepin, State of Minnesota.

Endorsed: Filed August 9th, 1884. E. J. Davenport, clerk, by C. B. Tirrell, deputy.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

District Court, 4th Judicial District.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Complaint.

The plaintiff for amended complaint complains and alleges—

1st. That during all the time hereinafter mentioned the
7 defendant was a corporation duly organized and created under the laws of the State of New York.

2d. That said defendant is engaged in the business of manufacturing sewing machines and selling the same by agents who deliver the same in wagons.

That said defendant has a general office in this State for the transaction of its business herein.

That on the 15th day of April, A. D. 1884, the plaintiff was walking over the crossing of Franklin avenue and Eighth avenue south, which was and is intended and designated for the use and convenience of foot passengers, which aforesaid streets and crossings are in the city of Minneapolis and county aforesaid.

That the defendant was then the owner of a wagon and two horses which were then being driven along said Franklin avenue and Eighth avenue south in the possession of defendant's servant; that said servant, while engaged in his employer's business, on the day aforesaid, with force and arms, drove the said wagon in which the said servant was then and there driving in and along said Franklin avenue and upon the said crossing, wrongfully and negligently, with great force and violence and without any fault of plaintiff whatever, upon and against the said plaintiff while she, the said plaintiff, was crossing along and over the said crossing of said Franklin and Eighth avenues south, and then and there, by reason of said careless, negligent, and reckless driving, the plaintiff was cast and thrown down upon said crossing with great violence, and the wheels of said wagon of defendant then and there passed over her body; by reason whereof the said plaintiff suffered and sustained many and grievous wounds and bruises upon her body, and was much frightened and alarmed; that her arm and shoulder was severely injured, — across her back, spine, and kidneys and her whole physical and nervous system shocked; that with the aid at hand this plaintiff, with much difficulty and in great pain, reached her home, near at hand, and for the next ensuing three months was confined to her bed, solely caused by the injuries received aforesaid.

And this plaintiff further shows the court that ever since said in-

jury she has been unable to attend to her business, to wit, dress-making, but in consequence thereof she has much of the time been sick and lame and delayed in and about the work of her business,
8 and plaintiff believes and alleges the fact to be that said injuries are of a permanent character, and that she will never entirely recover therefrom and be able to work.

That said plaintiff ever since said injury and solely therefrom has suffered great pain, anguish, and bodily suffering and mental anxiety, and still suffers as aforesaid, solely from said cause, to her damage in the sum of twenty thousand dollars.

That in consequence of said injury plaintiff has been obliged to incur great expense and to contract large liabilities for physicians' services and drugs, and she has needed and now needs constant attention and nursing, all to her further damage of $1,000.00.

Wherefore plaintiff demands judgment against said defendant for the sum of $21,000, with interest from the first day of August, 1884, and for the costs and disbursements of this action.

C. A. EBERT,
Attorney for Plaintiff.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Katie Rahn came before me personally and, being duly sworn, doth say that she is the plaintiff in the above-entitled action; that the foregoing complaint is true of her own knowledge, except — to those matters therein stated on her information and belief, and as to those matters that she believes it to be true.

KATIE RAHN.

Subscribed and sworn to before me this — day of ——, A. D. 188–.

HENRY EBERT,
[NOTARIAL SEAL.] *Notary Public, Hennepin County, Minn.*

Endorsed: Filed October 22nd, 1884. E. J. Davenport, clerk, by H. J. Altnow, deputy.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

District Court, 4th Judicial District.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

The defendant above named, answering the complaint of the plaintiff herein, denies each and every allegation, matter, and thing contained, except as hereinafter admitted or qualified.

Defendant denies that it is a corporation or organized or
9 created under the laws of the State of New York, and alleges

the fact to be that it is a corporation organized, created, and existing under the laws of the State of New Jersey, and now doing business therein.

Defendant admits that it is engaged in manufacturing sewing machines, and that it has a general office in this State.

Defendant admits that on the 15th day of April, A. D. 1884, it was the owner of one wagon, but denies that it owned at that time or at any time two horses or any number of horses, and denies that two horses or any number of horses belonging to defendant were at that time or at any time driven at the place mentioned in the plaintiff's complaint or elsewhere in the city of Minneapolis by any servant or agent of defendant or any one in its employment.

Defendant denies that any of its servants, while engaged in defendant's business or otherwise, did on said day, with force and arms or wrongfully or negligently or in any manner whatever, drive any wagon against plaintiff while she was crossing along the crossing mentioned in her complaint or at any other time or place, and denies that by any act of any servant of defendant plaintiff was cast or thrown upon any crossing with great violence or otherwise, and denies that by reason of any such act of any such servant the wheels of any wagon passed over her body, or that she suffered many grievous wounds or any wounds upon her body, or that she was frightened or alarmed, or that her arms or shoulders were severely injured or injured to any extent, or that she was injured across her back, spine, or kidneys, or elsewhere, or that her physical and nervous system were shocked in any manner.

Defendant denies that by reason of any act of any of its servants plaintiff was confined to her bed for three months or for any period whatever.

Defendant denies that by reason of any act of any of its servants plaintiff was confined to her bed for three months or for any period whatever. Defendant denies that by reason of any act of any of its servants plaintiff was prevented from attending to her business for any period, or that by reason thereof she received injuries of a permanent character or of any character whatever, or that she has suffered any pain, anguish, bodily suffering, or mental anxiety. Defendant denies that by reason of any act or acts of any of defendant's servants she has been damaged in the sum of twenty thousand dollars or in any sum whatever, or that by reason thereof she has been obliged to incur any expense or contract*ing* liabilities for physicians' services or drugs or nursing, or that she has suffered special damages in the sum of one thousand dollars or in any sum whatever.

Defendant, further answering, alleges the facts to be in reference to the accident mentioned in plaintiff's complaint that on the 10th day of April, A. D. 1884, one Thomas J. Corbett was and ever since has been engaged in selling sewing machines on commission, and not otherwise, for this defendant.

That the said Corbett was not then nor at any time the servant or agent of this defendant, and defendant had no control or direction of his actions in the prosecution of said business.

That said Corbett provided and owned the horse and harness used in said business, and that the wagon used therein was loaned to him by this defendant.

That the sewing machines sold by said Corbett were delivered and consigned to him by defendant to be sold on commission and accounted for to defendant, and that said Corbett was engaged then and ever since in selling other machines not manufactured by defendant and in which defendant had no interest; that defendant had no business or other relation to or connection with said Corbett, except as hereinbefore stated.

That on or about the 10th day of April, 1884, while said Corbett was driving his own horse attached to the wagon loaned to him by defendant along Franklin avenue, in said city, and when he had reached a point on said avenue between Eighth and Ninth avenues south, plaintiff carelessly and negligently ran into and against said Corbett's horse and was thrown to the ground; that said accident and all the consequences thereof were caused solely by plaintiff's own carelessness and negligence and want of proper precaution in crossing the said avenue.

That the place where said accident occurred was not the crossing of Franklin avenue and Eighth avenue south, as alleged in plaintiff's complaint, and that there was not then any crossing intended or designated for the use or convenience of foot passengers at the place where said accident occurred, and that the same occurred at a point several rods from the said crossing of Franklin avenue and Eighth avenue south and in the main travelled track of said avenue.

That at the time said accident occurred plaintiff was hastily and recklessly running across said avenue and did not take any precaution to observe the approach of teams, although said avenue is continuously used and traveled by teams, as plaintiff well knew; that said carelessness and want of precaution on the part of plaintiff in crossing said avenue and in attempting to cross the same at
11 a point where there was no crossing designated for foot passengers contributed to and was the sole cause of said accident.

That at the time said accident occurred the said Corbett was not acting in the course or within the scope of any employment whatever under this defendant, but was returning from church to his own home, and that he had not any time during the day on which said accident occurred transacted any business for defendant in or about its machines.

That the accident herein referred to is the same one mentioned in plaintiff's complaint, and that no other accident or injury with which defendant, by its servants or agents or property, was connected occurred to plaintiff at or about the time in her complaint mentioned or at any other time or place.

As to whether at the time of said accident and collision with said Corbett's horse plaintiff suffered many grievous wounds or any wounds upon her body, or was frightened or alarmed, or whether her arms or shoulders were severely injured or injured to any extent, or whether she was injured across her back, spine, or kidneys or elsewhere, or whether her physical and nervous system were

shocked in any manner, defendant denies any knowledge or information thereof sufficient to form a belief.

As to whether by reason of the said accident and collision plaintiff was confined to her bed for three months or for any period, and as to whether she has been unable to attend to her business since the said accident occurred, and as to whether the said injuries are of a permanent character, defendant denies any knowledge or information thereof sufficient to form a belief.

As to whether in consequence of said accident or collision plaintiff has been damaged in the sum of $21,000.00 or in any sum whatever, defendant denies any knowledge or information thereof sufficient to form a belief.

As to whether by reason of said accident and collision plaintiff has incurred expense and liabilities for drugs, physicians' services, and nursing, and has been damaged thereby in the sum of $1,000.00, or in any sum whatever, defendant denies any knowledge or information thereof sufficient to form a belief.

Wherefore defendant demands that it be dismissed hence with costs.

MAHONEY & DONAHUE,
Attorneys for Defendant.

12 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Stephen Mahoney, being first duly sworn, deposes and says that he is one of the attorneys for the defendant herein; that the foregoing answer is true to the best of his knowledge, information, and belief, and as to those matters stated on information and belief he believes them to be true; that all of the officers of the said defendant corporation are absent from said county wherein affiant resides.

STEPHEN MAHONEY.

Subscribed and sworn to before me this 26th day of September, 1884.

J. E. FLANIGAN,
[NOTARIAL SEAL.] *Notary Public.*

Endorsed: Filed Oct. 21st, 1884. E. J. Davenport, clerk, by C. N. Dickey, deputy.

The service of the within answer by copy admitted this 21st day of September, 1884.

C. A. EBERT,
Attorney for Plaintiff.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

District Court, 4th Judicial District.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Reply.

The plaintiff, for a reply to the answer of defendant, specifically denies each and every allegation of new matter in the answer set forth, except as hereinafter admitted.

Admits defendant is a corporation organized, created, and existing under the laws of the State of New Jersey.

Wherefore plaintiff renews her demand for judgment as in her complaint set forth.

CHARLES A. EBERT,
Plaintiff's Attorney.

13 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Katie Rahn came before me personally and, being duly sworn, doth say that she is the plaintiff in the above-entitled action; that the foregoing pleading is true of her own knowledge, except as to those matters therein stated on her information and belief, and as to those matters she believes it to be true.

KATIE RAHN.

Subscribed and sworn to before me this 1st day of October, 1884.
HENRY EBERT,
Notary Public, County of Hennepin, State of Minnesota.

[NOTARIAL SEAL.]

Service of the within reply by delivery of copy thereof at Minneapolis, Minnesota, admitted this 8th day of October, 1884.
MAHONY & DONAHUE,
Attorneys for Plaintiff.

Filed October 22d, 1884.
E. J. DAVENPORT, *Clerk,*
By H. J. ALTNOW, *Deputy.*

STATE OF MINNESOTA, *County of Hennepin,* } ss:

District Court, 4th Judicial District.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Notice of Trial.

SIR: You will please to take notice that the issue of facts and law in the above-entitled action will be brought on for trial at the next general term of the district court aforesaid, appointed to be held in and for the county of Hennepin, at the court-house, in the city of Minneapolis, in said county, on the 3d Tuesday in October, 1884, at the opening of said court on that day, or as soon thereafter as counsel may be heard.

Dated October 10th, 1884.

Yours respectfully,

C. A. EBERT,
Attorney for Plaintiff.

To Mahoney & Donahue, attorneys for defendant.

14 Due notice of the within notice is hereby admitted this 10th day of October, 1884.

MAHONEY & DONAHUE,
Attorneys for Defendant.

Filed October 13th, 1884.
E. J. DAVENPORT, *Clerk,*
By H. J. ALTNOW, *Deputy.*

STATE OF MINNESOTA, *County of Hennepin,* } ss:

District Court, 4th Judicial District.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Petition for Removal to the Circuit Court of the United States, District of Minnesota.

To said district court:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five thousand dollars.

That the controversy in said suit is between citizens of different States, and the petitioner was at the time of the commencement of this suit and still is a citizen of the State of New Jersey, being a

corporation duly created and existing under the laws of said State, and doing business therein, and that the only other party to said suit, viz., the plaintiff therein, was at the time of the commencement of this suit and still is a citizen of the State of Minnesota.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your commissioner prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Minnesota; and he will ever pray.

MAHONEY & DONAHUE,
Attorneys for Defendant and Petitioner.

15 STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Stephen Mahoney, being duly sworn, deposes and says that I am a member of the firm of Mahoney & Donahue, the attorneys of the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily —.

STEPHEN MAHONEY.

Subscribed by the said Stephen Mahoney in my presence and by him sworn to before me this 6th day of December, 1884.

[NOTARIAL SEAL.] J. E. FLANIGAN,
Notary Public, Hennepin County, Minn.

On filing the within petition and bond, this day approved by me, it is ordered that said action be, and the same, with all the records therein, is hereby, removed to the United States circuit court for the district of Minnesota.

Dec. 15, 1884.

WILLIAM LOCHREN, *Judge.*

Filed Dec. 15, 1884.
E. J. DAVENPORT, *Clerk,*
By C. B. TIRRELL, *Deputy.*

Know all men by these presents—

That The Singer Manufacturing Company, as principal, and E. J. Hodgson and W. H. Merrick, as sureties, are held and firmly bound unto Katie Rahn in the penal sum of five hundred dollars; the payment whereof, well and truly to be made unto the said Katie Rahn, her heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents—

Yet upon these conditions: The said The Singer Manufacturing Company having petitioned the district court of Hennepin county, fourth judicial district, State of Minnesota, for the removal of a certain cause therein pending, wherein said Katie Rahn is plaintiff and The Singer Manufacturing Company is defendant, to the circuit court of the United States in and for the district of Minnesota:

Now, if the said Singer Manufacturing Company, petitioner, shall enter in the circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court
16 of the United States if said court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 6th day of December, 1884.

THE SINGER MANUFACTURING COMPANY,
By its agent, F. W. NOYES. [SEAL.]
E. J. HODGSON. [SEAL.]
W. H. MERRICK. [SEAL.]

H. E. PARTRIDGE,
CARRIE A. BAYARD,
Witnesses.

Francis W. Noyes, to me well known to be the general agent of the Singer Manufacturing Company, who, being first duly sworn, says that he is the general agent of said company, and that it is incorporated under the laws of New Jersey, and that he is its duly authorized general agent to use and sign its corporate name in all its business in the States of Wisconsin, Minnesota, a part of Iowa, and Northern Dakota, with a general headquarters and office at Milwaukee, Wis., and that he has signed the corporate name of said company to the foregoing bond for the purposes therein expressed.

FRANCIS W. NOYES.

Subscribed and sworn to before me, at Milwaukee, Wis., this 6th day of December, A. D. 1884.

[NOTARIAL SEAL.] FRED. D. JONES,
Notary Public, Milwaukee County, Wisconsin.

STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

Be it known that on this 13th day of December, 1884, personally came before me E. J. Hodgson and W. H. Merrick, to me well known to be the same persons described as sureties in and who executed the foregoing bond, and each acknowledged that he executed the same freely and voluntarily.

[NOTARIAL SEAL.] STEPHEN MAHONEY,
Notary Public, Hennepin County, Minnesota.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

On this 13th day of December, 1884, personally appeared before me E. J. Hodgson and W. H. Merrick, and each, being duly sworn, deposes and says that he is one of the sureties in the foregoing bond; that he is a resident and freeholder in the State of Minnesota,
17 and worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

E. J. HODGSON.
W. H. MERRICK.

Subscribed and sworn to before me this 18th day of December, 1884.

[NOTARIAL SEAL.] STEPHEN MAHONEY,
Notary Public, Hennepin County, Minn.

STATE OF WISCONSIN, } ss:
County of Milwaukee, }

OFFICE OF THE CLERK OF THE CIRCUIT COURT.

I, Christopher Paulus, clerk of the circuit court of the county of Milwaukee, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Fred. D. Jones, Esq., whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions and acknowledgements of deeds, and perform such other duties as by the law of nations or according to commercial usage may be performed by notaries public, and that to his acts and attestations as such full faith and credit is and ought to be given in court and out.

I further certify that I verily believe said signature purporting to be his is genuine; that the seal thereto attached is a correct impression of his official seal, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Milwaukee, in said county and State, this 6th day of December, one thousand eight hundred and eighty-four.

[COURT SEAL.] CHRISTOPHER PAULUS,
Clerk of Circuit Court as Aforesaid.

Endorsed: I hereby approve the within bond and the sureties thereon. Dated this 15th day of December, A. D. 1884. William Lochren, judge. Filed December 15th, 1884. E. J. Davenport, clerk, by C. B. Tirrell, deputy.

18 KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Clerk's Certificate.

I, E. J. Davenport, clerk of the above-named court, do hereby certify that I have compared the papers writing to which this certificate is attached to the original complaint, amended complaint, answer, reply, notice of trial, petition, and bond for removal of cause to the United States circuit court in the above-entitled action as the same appears of record and on file in the said clerk's office, at the court-house, in said Hennepin county, Minnesota, and find the same to be a true and correct copy thereof.

E. J. DAVENPORT, *Clerk.*

By H. J. ATNOW, *Deputy.*

[SEAL DISTRICT COURT.]

And afterwards, to wit, on the 24th day of September, A. D. 1885, the following proceedings were had and entered of record in the above-entitled cause:

United States Circuit Court, District of Minnesota.

Term Minutes.

June Term, A. D. 1885, September 24th, 1885.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

This cause being regularly called for trial, the plaintiff appears by C. A. Ebert and J. W. Willis, her attorneys, and the defendant by Mahoney & Danohue, its attorneys; thereupon it is ordered that a jury come, to wit, George H. Robards, William Blackman, John B. Kelly, C. L. Grant, Edward Miller, S. M. Espey, Alexander Menzies, Henry Kreis, James Shonts, Wm. L. Perkins, A. L. Perkins, and Everett S. Gear, twelve good and lawful men, who are duly sworn to try the issues joined herein; thereupon the trial of said cause is proceeded with as follows, to wit: C. A. Ebert opens the case for the plaintiff. Robert L. Conroy sworn and examined on behalf of plaintiff; and, the trial of said cause not being concluded at the hour of adjournment, it is ordered that further proceedings herein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

19 United States Circuit Court, District of Minnesota.

Term Minutes.

June Term, A. D. 1885, September 25th, 1885.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

This day again come the parties herein, by their respective attorneys and the jury sworn to try this cause; thereupon the further trial of the same is proceeded with as follows, to wit:

Katie Rahn, sworn and examined on behalf of self; Albert B. Savage, Charles J. Rahn, Nelson Jordan, E. J. Garrison, Karl Rahn, Fred. M. C. Gonagle, Mrs. Rahn, Dr. Jeremiah Koehl, Dr. J. T. Moore, Thomas J. Corbett, Mrs. Lizzie Carlyle, respectively, sworn and examined on behalf of plaintiff.

And here the plaintiff rests.

And the trial of said cause not being concluded at the hour of adjournment, it is ordered that further proceedings herein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

United States Circuit Court, District of Minnesota.

Term Minutes.

June Term, A. D. 1885, September 26th, 1885.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

This day again come the parties herein, by their respective attorneys, and the jury sworn to try this cause; thereupon the further trial of the same is proceeded with as follows, to wit: Mr. Cross, defendant's attorney, moves the court to instruct the jury to find a verdict for the defendant.

Said motion being fully argued and duly submitted and the court, being fully advised in the premises, denies the same.

Thereupon Thomas J. Corbett is recalled and examined on behalf of defendant.

Michael Healy sworn and examined on behalf of defendant.

Mrs. Everett Pfiefeld, E. W. Faville, B. D. Moore, Chas. Stout, Dr. E. B. Gates, and Frank Burton, respectively, sworn and examined on behalf of the defendant.

And here the defendant rests.

20 And the trial of said cause not being concluded at the hour of adjournment, it is ordered that further proceedings herein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

United States Circuit Court for the District of Minnesota.

Term Minutes.

June Term, A. D. 1885, September 28th, 1885.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

This day again come the parties herein, by their respective attorneys, and the jury sworn to try this cause; thereupon Mr. Cross sums up the case for the defendant; J. W. Willis, Esq., sums up the case for the plaintiff. The court instructs the jury and they retire to consider of their verdict. After due consultation concerning the same and being fully advised in the premises, they find and return into court their verdict in the words and figures following, to wit:

"ST. PAUL, *Sept. 28th*, 1885.

"We, the jury in the case of Katie Rahn *vs.* The Singer Manufacturing Company, find for the plaintiff and fix the damages at $10,000.

"S. M. ESPEY, *Foreman.*"

It is therefore considered, ordered, and adjudged by the court that the above-named plaintiff do have and recover of and from the above-named defendant the aforesaid sum of ten thousand dollars ($10,000) so found to be due by the jury, besides their costs and disbursements herein, to be taxed, and that she have execution therefore. Thereupon, upon motion of defendant's attorney, it is ordered that execution be, and the same is hereby, stayed for forty days from date hereof.

Judgment-roll signed this 1st day of October, A. D. 1885.

OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy.*

Damages, $10,000.

And afterwards, to wit, on the 28th day of September, A. D. 1885, the jury verdict was fixed in this cause; which said verdict is in the words and figures following, to wit:

21 SAINT PAUL, *Sept. 28th*, 1885.

We, the jury in the case of Katie Rahn *vs.* The Singer Manufacturing Company, find for the plaintiff and fix the damages at ten thousand ($10,000) dollars.

S. M. ESPEY, *Foreman.*

And afterwards, to wit, on the 7th day of November, A. D. 1885, an order allowing the filing of a petition for a new trial was entered of record in Term Minutes "G," page 19, said order being in the words and figures following:

Order Allowing Filing of Petition for New Trial.

United States Circuit Court for the District of Minnesota.

Term Minutes.

June Term, A. D. 1885, November 7th, 1885.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

This day comes the defendant, by Cross, Hicks & Carleton, its attorneys, and presents to the court a motion for a new trial of this cause. Thereupon, upon motion of attorneys, said petition is allowed and hereby ordered filed of record in said action.

Which said petition for a new trial is in the words and figures following, viz:

Petition for New Trial.

In the United States Circuit Court for the District of Minnesota.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY.

To the honorable the United States circuit court for the district of Minnesota:

Your petitioner, the above defendant, The Singer Manufacturing Company, respectfully states that the above-entitled cause was tried before your honorable court and a jury, said trial commencing on the — day of September, 1885, and a verdict rendered therein for the plaintiff and against the defendant for the sum of ten thousand dollars on the 28th day of September, 1885, and a judgment entered therein on said verdict for said sum of ten thousand dollars, together with the costs of said action, amounting to the sum of — dollars, in favor of said plaintiff and against said defendant.

22 Your petitioner believes that said verdict and judgment is erroneous, and therefore prays this honorable court for an order vacating said judgment and setting aside said verdict and granting your petitioner, the above-named defendant, a new trial for the following reasons, to wit:

1st. For errors in law occurring at the trial, which were duly excepted to by the defendant.

2d. For the reason that the verdict was not justified by the evidence and was contrary to law.

3d. For the reason that the verdict is excessive and appears to have been given under the influence of passion or prejudice.

MAHONEY & DONAHUE AND
CROSS, HICKS & CARLETON,
Attorneys for Defendant.

Endorsed: "Filed by allowance of R. R. Nelson, judge, this 7th day of November, 1885. Oscar B. Hillis, clerk.

And afterwards, to wit, on the 30th day of November, A. D. 1885, the bill of exceptions was filed in this case, said bill being in the words and figures following, to wit:

Bill of Exceptions.

United States Circuit Court for the District of Minnesota.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY.

The issues in the above-entitled action came on for trial before the Honorable R. R. Nelson, one of the judges of this court, at a circuit court held in the city of St. Paul on the 24th day of September, 1885. A jury was called and sworn, and the plaintiff, by his counsel, opened his case; and, after the plaintiff had introduced all of the evidence on his part to maintain the issues thereon, the defendant thereupon, in maintaining the issues on his part, introduced a contract, of which the following is a copy:

Canvasser's Salary and Commission Contract.

This agreement witnesseth that the Singer Manufacturing Company (a corporation duly incorporated and organized under the laws of the State of New Jersey, and whose corporate existence and capacity to sue or be sued is hereby distinctly admitted), of
23 the first part, and T. J. Corbett, of Minneapolis, county of Hennepin and State of Minnesota, of the second part, do enter into a contract as by the memoranda following, to wit:

1st. The party of the first part agrees to pay unto the party of the second part for his services in selling and leasing Singer sewing machines five dollars for each and every acceptable sale of a new machine sold by him, and in addition to said five dollars a further sum of ten per cent. of the gross price realized for said sales so made shall be paid to said second party, which, in addition to the five dollars on each acceptable sale, shall be deemed a selling commission, and shall be paid upon the verification and acceptance of said sales by the first party's representative at Milwaukee, the five dollars per sale being simply an advance by the first party until the sales are so verified and accepted, and if not verified and accepted the advance money to be refunded, but, when the amount is actually paid and the per centum aforesaid is paid, shall be in full for second party's services rendered to date thereof. On lease sales two dollars of the selling commission shall be paid out of the first five-dollar payment, and the balance of the selling commission shall be paid out of the subsequent payments in proportion of one-half of each payment until selling commission is paid in full.

2d. The party of the first part shall pay unto the second party for his further services a collecting commission of ten per cent. on the amounts or balances due from customers having purchased machines from him, payable as the cash shall be collected and paid over to the said first party or its authorized representatives at Minneapolis, and the said per centum so paid shall be in full for the services of said second party in collecting or other service rendered to date thereof.

3d. No per centum shall be due or payable to said second party on any sale made by him at a discount from the required prices furnished him and as printed on back of this contract for time, cash, or exchange, respectively, and no sale made at a less price will be considered an acceptable sale by either party, nor will it be accepted by said first party.

4th. Old machines may be taken at the rates shown on the back of this contract, and $2.50 of the amount so allowed shall be deducted from the selling commission of the sale, and the old machine shall be delivered to and belong to the first party, it being further provided that if the said old machine shall again be sold by second party for cash at a profit that one-half of said profit shall be paid to second party by first party.

24 5th. If a machine sold by second party is repossessed, or if lessee should remove outside of the limits of territory controlled by Milwaukee office or wrongfully dispose of machine, or machine should be destroyed before twenty dollars in money shall have been paid thereon, three dollars of the commission that has been paid thereon shall be refunded by second party: Provided, That on any machine the price of which is fifty dollars or more five dollars shall be refunded, it being optional with first party to reject sales or repossess any machine in case the sale is not acceptable or the terms of the sale are violated.

6th. On a sale for part cash and part note, if ten dollars in cash is paid, a discount of one dollar may be made from time price; if twenty dollars in cash is paid a discount of two dollars may be made from time price, and if thirty dollars in cash is paid a discount of three dollars may be made from time price. No notes shall be taken on a longer time than twelve months, and shall be drawn with interest at seven (7) per cent. after six months.

7th. The said first party agrees to furnish a wagon, and any damage to said wagon through negligence shall be at the cost and expense of said second party; and the said second party agrees to furnish a horse and harness, to be used exclusively in canvassing for the sale of said machines and the general prosecution of said business, and said second party agrees to give his exclusive time and best energies to said business and pay all expenses attending same.

8th. The said second party agrees to employ himself under the direction of the said Singer Manufacturing Company, and under such rules and instructions as it or their manager at Minneapolis shall prescribe, and in all respects to comport himself to the best interests of the business of the said first party, and to neither sign nor to make use of the name of the said company in any manner whereby the public or any individual may be led to believe that the said

company is responsible for his actions, said second party's power being simply to make sales and turn over the proceeds to the said first party. If any special acts are required of said second party the power to perform the same will be specially delegated.

9th. It is further agreed that if upon investigation by first party of business entrusted to second party any wrongful act of second party should be discovered that second party shall pay any and all expenses attending such investigation; and if it should be found that any moneys or other property or things shall have been withheld from first party fraudulently, then and in that case any and all commissions that would otherwise accrue under this contract shall revert to the first party, and such reversion shall not release the second party from further liability to said first party.

10th. It is further agreed that if said second party sells any other than the machines furnished to him by said first party it shall work a forfeiture of any commissions that accrue under this agreement, if violated prior to the termination of the same.

11th. It is also agreed and understood that no agreements outside of this printed form or differing from it shall be of any binding force unless they are confirmed by the said first party's agent at Milwaukee, Wisconsin.

12th. This agreement may be terminated by the first party at any time, and by said second party by giving first party ten days' notice in writing.

This agreement to take effect on and after February 11th. 1884.

In witness whereof the said parties have hereunto set their hands this seventh day of February, 1884.

THE SINGER MANUFACTURING CO.,
By M. HEALY, *Manager.*
T. J. CORBETT.

Witness:
NELLIE HEALY.

The court in its charge to the jury regarding the relationship of master and servant between the defendant and Corbett, who was the driver of the wagon when the accident occurred, charged the jury as follows in relation to the construction of said contract as in itself creating the relationship of master and servant between Corbett and said defendant, to wit:

GENTLEMEN OF THE JURY: The plaintiff, a citizen of this State, residing in Minneapolis, brings this suit against the Singer Manufacturing Company, a corporation incorporated and organized under the laws of the State of New Jersey, to recover damages for personal injury inflicted, as she alleges, through the negligence of the defendant. She asks to be compensated for injury which she has suffered at the hands of this defendant through its negligence, as she alleges.

Of course you will see that the gist of the whole action is the
26 negligence of the defendant, and the burden of proof is upon the plaintiff to show that the defendant committed the injury through its negligence upon the plaintiff.

The claim of the plaintiff is that she was crossing, on the 10th day of April, 1884, about twilight, between sundown and dark, Franklin avenue, in the city of Minneapolis, and while crossing was run down by a horse and wagon driven by one Corbett. The wagon had upon it a singer sewing machine screwed down to the box of the wagon. Now, before the plaintiff can recover against the defendant she must show that Corbett was a servant of this defendant—that is, that the relation of master and servant existed; that Corbett was a person whose conduct was under the control of the defendant in the particular business in which he was engaged. The general rule is that the master is answerable for the wrongful act of a servant committed in the course of the master's service, and this will apply to a corporation as well as to an individual. Corporations who are represented by and who operate through agents are not responsible for all wrongful acts committed by their agents or servants, but the wrongful act must be done when the agent or servant was employed in the actual service of the corporation, or engaged exclusively for its benefit; so that in this case the principal question for the jury to consider is, Was Corbett at the time that this plaintiff was run down on that street in the service of the defendant? The usual test to determine whether the relation of master and servant existed is whether the person who is charged to be the master had the right to direct the person's conduct and prescribe the mode of his action in doing the particular business—that is, to direct how the work should be done. If the person who is employed to do a particular work reserves to himself when and how the work is to be done he may be an independent contractor; so that you are to determine, and that is the first question that presents itself here, whether the relation of master and servant existed between the defendant and Corbett at the time this plaintiff was run down on that street, bearing in mind that the right to direct the person's conduct and to prescribe how the work or business should be done is the usual test to determine whether that relation of master and servant exists. In this case there is a contract which is before you, a contract of employment, signed by the defendant and Corbett, defining what his duties were and how he was to work. It is called a "canvasser's salary and commission contract," and by its terms Corbett was to receive five dollars for every machine
27 that he sold, and, in addition to the five dollars, he was to receive a commission upon the price of the machine which he sold as a "selling commission." He was to receive, in addition to the said five dollars, a further sum of ten per cent. on the gross price realized for said sales so made. He received not only the fixed sum of five dollars, but he was to receive a commission of ten per cent. upon the gross sales. In the pursuit of his business the defendant agreed to furnish him a wagon. This wagon belonged to the company or corporation, and Corbett was to furnish a horse and harness, to be used exclusively in the business of the defendant. A further significant provision in this contract is: Corbett, or the second party, agrees to employ himself under the direction of the said Singer Manufacturing Company, thus coming within the very test which is given to determine whether the relationship of master and

servant exists in law, viz., the right to direct the person's conduct and to prescribe the mode of doing the work. Then this was to be done under the direction of the Singer Sewing Machine Company, and "under such rules and instructions as it or their manager at Minneapolis shall prescribe;" so that upon the testimony as introduced here it is sufficient for me to say that this paper alone, in my opinion, establishes the relationship of servant and master between Corbett and the defendant in this action.

To which charge the defendant duly excepted at the time and place, and which exception was then and there duly noted and allowed.

The defendant also requested the court to charge the jury as follows, to wit: "2d. That the contract under which Corbett, the driver of the horse causing the accident, was operating made him an independent contractor, and the defendant could not be liable for any damage done through his negligence, if he was negligent;" which said request was refused by the court; to which refusal to so charge the jury as requested the defendant then and there duly excepted, and which exception was duly allowed and noted.

The jury then, on the 28th day of September, 1885, returned a verdict for the plaintiff in the sum of ten thousand dollars; on which verdict the court ordered judgment for the plaintiff for the sum of ten thousand dollars, together with the costs of the action, which were taxed at — dollars; in all, the sum of — dollars.

Wherefore the defendant prayed for a bill of exceptions; and whereas none of the aforesaid matters as yet appear of record,
28 the above bill of exceptions is duly allowed, signed, and sealed, during the term, this 21st day of November, 1885.

R. R. NELSON, *Judge.*

Endorsed: "Allowed and filed November 30th, 1885. Oscar B. Hillis, clerk."

And afterwards, to wit, on the 21st day of December, A. D. 1885, the following further proceedings were had and entered of record in Term Minutes "G," page 63, in the words and figures following:

United States Circuit Court for the District of Minnesota.

Term Minutes.

December Term, A. D. 1885, December 21st, 1885.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

Defendant's motion for a new trial coming on to be heard, defendant appeared by Cross, Hicks & Carleton, its attorneys, and the plaintiff by John W. Willis and C. A. Ebert, her attorneys.

Thereupon said motion is argued on behalf of defendant by Mr. Cross, and upon behalf of plaintiff by John W. Willis. Defendant's attorney in open court withdraws his third reason set forth in its petition for a new trial.

The argument of said motion not being concluded, the further hearing of the same is postponed until Thursday morning, December 24th, at 10 o'clock.

United States Circuit Court for the District of Minnesota.

Term Minutes.

December Term, A. D. 1885, December 24th, 1885.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

The further hearing upon defendant's motion for a new trial having been continued until to-day, now comes the defendant, by its attorney, Mr. Cross, on whose motion it is ordered that the further hearing of said motion for a new trial be, and the same is hereby, postponed until Monday morning, December 28th, 1885, at 10 o'clock.

29 United States Circuit Court for the District of Minnesota.

Term Minutes.

December Term, A. D., 1885, December 28th, 1885.

Monday morning court opened pursuant to adjournment.
Present: Hon. R. R. Nelson, judge.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

Defendant's motion for a new trial coming on to be further heard, the parties appeared by their respective attorneys and the argument of the same was concluded, duly submitted, and by the court taken under advisement.

And afterwards, to wit, on the 4th day of March, A. D. 1886, the order of the judge denying motion for a new trial and reducing judgment to $5,100 was filed in said cause; which said order and reduction of judgment is in the words and figures following, to wit:

Order of Judge Denying Motion for New Trial and Reducing Judgment.

United States Circuit Court, District of Minnesota.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY. } March, 1886.

NELSON, *J.:*

The judgment in this cause is reduced to five thousand one hundred dollars, and motion for new trial denied without prejudice to writ of error.

United States Circuit Court for the District of Minnesota.

Term Minutes.

December Term, A. D. 1885, March 4th, 1886.

Thursday morning.

KATIE RAHN
vs.
THE SINGER MANUFACTURING COMPANY.

Defendant's motion for a new trial herein having been heretofore fully argued, duly submitted, and by the court taken under advisement, now the court, after due consideration thereof and being fully advised concerning the same, *it is* ordered that said petition be, and the same is hereby, denied, and that the judgment heretofore entered herein for the sum of ten thousand dollars be, and the same is hereby, reduced to the sum of fifty-one hundred dollars.

And afterwards, to wit, on the 12th day of March, A. D. 1886, a writ of error was issued out of this court, said writ of error being herewith returned.

And afterwards, to wit, on the 17th day of March, A. D. 1886, the supersedeas bond on appeal, with the order of judge approving the same endorsed thereon, was filed; which said bond is in the words and figures following:

Bond on Appeal.

Supreme Court of the United States.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Know all men by these presents that we, The Singer Manufacturing Company, as principal, and Edward J. Hodgson and Sabin S.

Murdock, as sureties (said The Singer Manufacturing Company being a corporation duly organized and existing under the laws of the State of New Jersey and doing business in the State of Minnesota, and said sureties both being residents of the State of Minnesota, said Hodgson of the city of St. Paul, and said Murdock of the town of Murdock, in said State), are held and firmly bound unto Katie Rahn, the plaintiff in the above-entitled action, of the city of Minneapolis, State of Minnesota, in the sum of ten thousand dollars ($10,000) as a penalty, to be paid to the said Katie Rahn, her executors or administrators.

To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of March, A. D. 1886.

Whereas the above-named The Singer Manufacturing Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the United States circuit court for the district of Minnesota, on the 28th day of October, 1885:

Now, therefore, the condition of this obligation is such that if the above-named Singer Manufacturing Company shall prosecute its said writ of error to effect and answer all costs and damages
31 if it shall fail to make good its plea, then this obligation shall be null and void; otherwise to remain in full force and virtue.

In testimony whereof we have hereunto set our hands and seals this 12th day of March, A. D. 1886.

THE SINGER MANUFACTURING COMPANY,
By CROSS, HICKS & CARLETON, *Its Attorneys.* [SEAL.]
EDWARD J. HODGSON. [SEAL.]
SABIN S. MURDOCK. [SEAL.]

In presence of—
O. B. HILLIS.
J. A. SPENCER.

UNITED STATES OF AMERICA, }
District of Minnesota. }

On this 12th day of March, A. D. 1886, before me, Oscar B. Hillis, clerk United States circuit court within and for said district, personally appeared Judson N. Cross, as one of the members of Cross, Hicks & Carleton, attorneys for the defendant, and Edward J. Hodgson and Sabin S. Murdock, to me known to be the persons described in and who executed the within bond, and acknowledged that they executed the same as their free act and deed, and said Judson N. Cross acknowledged the same to be the free act and deed of said The Singer Manufacturing Company by him as one of its attorneys.

[SEAL.] OSCAR B. HILLIS,
Clerk United States Circuit Court, District of Minnesota.

UNITED STATES OF AMERICA, }
District of Minnesota. }

Edward J. Hodgson and Sabin S. Murdock, being duly sworn, say each for himself that he is one of the sureties above-named; that he is a resident and freeholder of the State of Minnesota and worth the amount of fifteen thousand dollars above his debts and liabilities, exclusive of his property exempt from execution.

EDWARD J. HODGSON.
SABIN S. MURDOCK.

Subscribed and sworn to before me this 12th day of March, 1886.
[SEAL.] OSCAR B. HILLIS,
Clerk U. S. Circuit Court, District of Minnesota.

32 Endorsed: "I hereby approve the within bond and sureties therein contained this 17th day of March, A. D. 1886. R. R. Nelson, judge.

33 UNITED STATES OF AMERICA:

The President of the United States to Katie Rahn, plaintiff, and to Messrs. John W. Willis and Ebert and Long, her attorneys:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court for the district of Minnesota, wherein The Singer Manufacturing Company is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice
34 should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the U. S., at St. Paul, in said district, this 17th day of March, A. D. 1886.

R. R. NELSON, *Judge.*

35 [Endorsed:] Ent. 162 D, law. Supreme Court of the United States. The Singer Manufacturing Company, plaintiff in error, *v.* Katie Rahn, defendant in error. Citation. Due service of the within citation hereby acknowledged this 24th day of March, 1886. Ch's A. Ebert, attorney for plaintiff. Filed April 13th, 1886. Oscar B. Hillis, clerk.

36 In the United States Circuit Court for the District of Minnesota.

KATIE RAHN, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY, Defendant.

Assignment of Errors.

And now comes the defendant in the above-entitled cause and assigns as error that portion of the charge of the court to the jury in which it instructs the jury that the contract between the defendant and Corbett creates the liability of master and servant and not that of an independent contractor on the part of Corbett.

MAHONEY & DONAHUE AND
CROSS, HICKS & CARLETON,
Attorneys for Defendant.

See Book 52.

37 UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES, *District of Minnesota*, } *ss:*

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 31 pages, numbered consecutively from 3 to 33, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment, and all other proceedings in said cause and of the whole thereof as appears from the original records and files of said court; and I do further certify and return that I have annexed the said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at St. Paul, in the district of Minnesota, this 13th day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 111th year.

[U. S. Circuit Court Seal, Dist. of Minnesota.]

OSCAR B. HILLIS,
Clerk U. S. Cir. C't, District of Minnesota.

Endorsed on cover: Minnesota C. C. U. S. No. 396. The Singer Manufacturing Company, plaintiff in error, *vs.* Katie Rahn. Filed October 5, 1886.

SUPREME COURT OF THE UNITED STATES.

SINGER MANUFACTURING COMPANY,
Plaintiff in Error,

vs.

KATIE RAHN,
Defendant in Error.

ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

ARGUMENT FOR PLAINTIFF IN ERROR.

GROSVENOR LOWREY,
Counsel for Plaintiff in Error.

CROSS, HICKS & CALETON,
Attorneys.

C. G. Burgoyne's Printing Business, 146 Centre Street, N. Y.

Supreme Court of the United States.

THE SINGER MANUFACTURING COMPANY,
Plaintiff in Error,

AGAINST

KATIE RAHN.

October Term, 1889.
No. 122.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

The action was for personal injury by negligence; and the trial was by jury. Error is assigned upon matter contained in the charge of the Judge, and upon refusal to charge as requested.

Statement of Facts.

The injuries suffered by the defendant in error were the alleged consequence of negligent driving in the streets of Minneapolis by one Corbett, who is described as being a servant of the plaintiff in error. There was an amended complaint in which it was specifically averred that by reason of this negligence of the alleged servant, "the wheels of said wagon of defendant then and there passed over her body, etc."

This definite indication of the mode of injury was wanting in the first complaint; and it may or may not have been inserted in the second, because it had

transpired in the meantime that the plaintiff in error was not the owner of the horse, but was the owner of the wagon, constituting the equippage in charge of Corbett.

In both complaints the relation of the plaintiff in error to Corbett the driver; to the property in his charge; and to the business which he was prosecuting, is stated as follows: "the defendant was then the owner of the wagon and two horses which were then being driven along said Franklin avenue and Eighth avenue, south, in possession of defendant's servant; that said servant while engaged in his employer's business * * * with force of arms drove said wagon, etc., etc. * * * and wrongfully and negligently, with great force and violence, etc., etc. * * * and then and there, by reason of said careless and negligent and reckless driving, the plaintiff was thrown down upon said crossing with great violence" (Record, fols. 7, 9).

All this was alleged to have occurred on the 15th of April, 1884. The answer set up, however, "that on or about April 10th, while said Corbett was driving his own horse, attached to the wagon loaned him by defendant," an accident had occurred through the negligence of the plaintiff who was thrown down by Corbett's horse (Record, fol. 10); and "that at the time said accident occurred, said Corbett was not acting in the course, or within the scope of any employment whatever, under this defendant, but was returning from church to his own home, and he had not at any time during the day on which said accident occurred, transacted any business for defendant in or about its machines" (Record, fol. 11).

At the trial a contract was put in evidence between the Singer Manufacturing Company and T. J. Corbett, which is printed at folios 23, 25 of the Record. The parts of the contract material to be referred to will be found in the 1st article, in which the manner of the em-

ployment is fixed ; in the 7th, in which the parties agree respectively to furnish the parts of a team or outfit for use when needed, by which arrangement Corbett was to furnish a horse and harness, and the company was to loan him a wagon, which he was to return (being liable for any damages to the wagon caused by his own negligence); and in the 8th, in which Corbett "agrees to employ himself *under the direction of said Singer Manufacturing Company* and *under such rules and instructions* as it or their manager at Minneapolis *shall prescribe*, * * * and in all respects to comport himself to the best interests of the said first party."

The learned Judge at the Circuit in instructing the jury said that the plaintiff must show "that Corbett was the servant of this defendant ; that is, that the relation of master and servant existed ; that Corbett was a person whose conduct was under the control of the defendant in the particular business in which he was engaged" (fols. 28, 29), and "that the usual test to determine whether the relation of master and servant existed is whether the person who is charged to be the master had the right to direct, personally conduct and prescribe the mode of his action in doing the particular business, that is, to direct how the work should be done."

Ibid.

Having laid down these undisputed rules of law the learned Judge proceeded to apply them as follows : "Upon the testimony as introduced here it is sufficient for me to say that this paper alone, in my opinion, establishes the relationship of master and servant between Corbett and defendant in this action" (fol. 27); and afterwards, upon the same theory, he refused to charge as requested.

Ibid.

It must be noted that the record contains nothing to

indicate that any "rules," "instructions" or "directions" were ever in fact given to Corbett; or, that he was on that occasion *driving his horse according to any will but his own.* The charge virtually instructs the jury upon and by the contract *alone*, to find the relation of master and servant, as a fact. Had there been proof showing an actual control exercised under the terms of the contract, it would doubtless have been referred to. It seems also that the Court regarded the contract as broad enough to cover Sundays, and all other times during the currency of the contract when Corbett was driving his horse--because, perhaps, of the stipulation that the horse should be used only in the canvassing business, which was thus made to include going to church. It is also not improbable that from the jury point of view it was regarded as gross negligence in the defendant to be a rich foreign corporation, any way; and thus the cause of action, and the obligation *respondeat superior* were sufficiently made out, without evidence that Corbett was ever in any sense directed, regulated or instructed as to the acts and conduct in which he was negligent to the plaintiff's injury.

Assignment of Errors.

The sole question is, whether the interpretation of this contract by the Court is correct in law; and the plaintiff in error assigns for error.

(1) So much of the charge as held that a certain agreement in writing (folio 27, Transcript of Record) "establishes the relationship of servant and master, between Corbett and the defendant in this action."

(2) The refusal of the Court to charge as requested that "the contract under which Corbett, the driver of the horse causing the accident, was operating made him

an independent contractor, and defendant could not be liable for any damage through his negligence, if he was negligent *(Ibid.)*.

Argument for Plaintiff in Error.

The injury was suffered by reason of the negligent driving by Corbett of a horse belonging to him, and attached to a wagon belonging to the Singer Manufacturing Company. It was as the driver of a horse, and not as the seller of sewing machines that he possessed the ability to inflict and did inflict the injury complained of.

Was he, *quoad* this horse driving in which the negligence arose by force of Sections 7 and 8 of the contract, the servant of the company?

Did the company by that paper employ him or license him to drive a horse? Or was driving a merely collateral and uncertain incident to the performance of other work by contract, and independent of the contractee's control?

Could the company by withdrawing his employment have prevented Corbett from driving at that time, through that street, and in that manner?

Could they have legally commanded the manner of his driving in any respect, even if the whole Board of Directors had been sitting by his side?

The employment of Corbett was for the selling of sewing machines by the method now well known in all business as "canvassing," and which in this trade consists in going with or without the sewing machine after the customer where he is to be found, instead of waiting for the customer to come after the sewing machine. It is self-evident that this employment may be practiced by awaiting customers on the street corners; by

visiting them in their houses or places of business; in short by soliciting them wherever found by chance, or by design. The canvasser may reach the place where he is to employ his powers of solicitation by going on foot, on horseback, by ordinary pubiic conveyance, or, as in this case, by driving his own horse attached to a borrowed wagon. The idea of sales by canvassing implies necessarily the idea of great independence and freedom in determining how, when and where to attempt this persuasion of customers. It is a distinct and independent occupation, by means of which nine-tenths of the wholesale or jobbing trade of this country is now carried on. The canvasser is employed and paid to produce results. The means, the times, and to a degree the expenses are left necessarily to him. It is by its nature, and as to its means of bringing about results, as far removed from the characteristic *criteria* of a master and servant relation as any independent contract can ever be.

The only thing which justifies any serious consideration of the claim that *quoad* the driving of his horse, this man was the servant of the plaintiff in error, is the fact that he was furnished a wagon without charge, "all damage to said wagon through negligence to be at his cost and expense."

That contribution to his outfit was a mere bailment.

Nothing in the canvasser's agreement requires that he is to travel on his business by means of this horse; or at any time except for his own convenience and by his own will; or at any time to use this wagon. We can easily conjecture that a delivery wagon would be at times needed; and beside paying him the fixed sums specified in the canvasser's contract for each complete sale and delivery, the company also relieved him from the expense of providing the kind of wagon suitable for such service. The motive which the company might have for retaining the ownership of wagons fitted, painted, etc., for this work is apparent, and does not

imply any purpose to deal with the canvasser otherwise than as an independent contractor who selects his own times and means, pays all his expenses—receiving a gross sum as compensation on each actual sale.

The authorities which distinguish the relation of master and servant—with power of control and coincident responsibility—from the mutual relation of independent co-contractors, are numerous and clear.

It is deducible from all the cases that *quoad* a particular thing to be done, that one is master who lawfully may and does license, command and control the doing of a thing. That one is servant who derives his authority from the other, and who lawfully must persist or desist, and govern his conduct according as he is commanded.

When in doing the thing commanded, the servant, by negligence, inflicts injury on a stranger, the master must answer because he had power in respect to the injurious act or omission, which might and should have been exercised to prevent it. If he plead that he was not present, the reply to him is, that the original power of selection, and the constant power of correction and dismissal are balanced by this characteristic responsibility, and create against him an irrebutable presumption of law.

Generally the relationship is for a fixed period; the servant gives all his time; and a certain superiority and power on the one part, with subjection and duty on the other, are understood.

But when one party engages with another to accomplish some result—such as the selling of a sewing machine—for a gross compensation, bearing all his expenses, we have quite another relation; and ordinarily, in similar cases, the engaging party has been held to be an independent contractor, directly responsible to the world for his choice and use of means to effect the result.

After long discussion in the courts in a great variety

of cases the law is settled so as to be capable of succinct and practically uniform statement in the text books, suitable to be cited in a court of law. Thus in Wood's Law of Master and Servant, page 618, it is said:

A partial reservation of authority or control in certain respects does not transform the contractor into a mere servant if, in fact, the contract places the contractor in an independent relation, and he reserves the general control over all the work as to the manner and method of the execution; the fact that the employer reserves the right to prescribe what shall be done but not how it shall be done, or who shall do it does not divest him from the character of a contractor. The simple test is, who has the general control over the work? Who has the right to direct what shall be done, and how to do it? And if the person employed reserves this power to himself, his relation to the employer is independent and he is a contractor; but if it is reserved to the employer, or his agents, the relation is that of master and servant. *If the injury arises in respect of the particular matter over which he* (the principal) *reserves particular control*, but exercising the power reserved, he would, in that case, be held chargeable as master."

In Cooley on Torts, p. 548, it is said:

* * * "Where the contract is for something that may lawfully be done and is proper in its terms, and there has been no negligence in selecting a suitable person to contract with in respect to it, and no general control reserved either as respects the manner of doing the work or the agents to be employed in doing it, and the person for whom the work is to be done is interested only in the ultimate result of the work, and not in the several steps as it progresses, the latter is neither liable to third persons for the negligence of the contractor as his master, nor is he master of the persons employed by the contractor so as to be responsible to third persons for their negligence."

Mr. Wharton illustrates the distinction between servant and agent thus:

"Agency or mandate, as has been already seen, is distinguish-
" able from *locatio conductio operarum*, or the relation of master and
" servant, by the fact that the former relates to business in which
" there is more or less discretion, &c. * * * Or I employ a
" salesman, he having discretion as to the parties to whom to sell.
" In each of these cases the employment is agency or mandate and
" not of master and servant, or *locatio conductio operarum*."

Wharton on Agency, Secs. 19–20.

If by reason of having allowed Corbett to sell its machines, the company is liable for his negligence when driving a horse to a place with that object, it is because he is progressing in the character of a servant, or of one sent; and who might have been forbidden or restrained from going to that place; or lawfully commanded to go at another time; or by another route; and not because he was going in the company's wagon drawn by his horse. That being so the company would be for this purpose equally liable for his negligence when he goes on foot; and if Corbett, going on foot and inspirited with the hope of persuading a customer should walk too rapidly, or otherwise negligently, and come in contact with another passenger, thus inflicting an injury, the Singer Sewing Machine Company would be liable.

So also, if going to his destination, with the same purpose and under the same contract, he had taken the horse cars, and the defendant in error being a passenger by the same car, he had carelessly trodden upon her foot or overturned her basket of breakable articles, thus inflicting actionable damage, would the Singer Company be liable?

These extensions of the doctrine of the charge show that it claims too much.

It is true that the contract contains express reference to the employment of a horse and harness which is to be used exclusively in canvassing for sales; and for furnishing a wagon to be used in connection with the horse and harness; but it seems to be clear that these are no part of the business of selling machines, or of canvassing. They are convenient incidental arrangements, by which one party pays part of the other's compensation by supplying something which otherwise that other must supply.

If the contract had provided that the canvasser should not waste his time in walking, but should always ride in the horse cars, and that the company would sup-

ply him with the funds for paying his car fares, it would hardly be tenable that this would be such a reservation of control over the *manner* in which the business of convassing should be carried on as to make the company the master and the canvasser the servant *quoad* these urban journeys. Not only the terms and spirit of the contract, but the well understood nature of the business of canvassing is inconsistent with the idea of such reservation of control over the "How," the "When," and the "Means" of approaching and persuading a customer.

A large part of the internal business of this country is now carried on by what are known as traveling salesmen or drummers, all of whom travel under direction of their employers, in some degree. They are, with varying degrees of minuteness, always acting "under directions, rules and instructions," sending them from from one city and town to another to solicit sales of particular goods on terms of credit, &c., more or less fixed in advance, and they necessarily spend a great deal of their time in hotels and public places while in the prosecution of their business. Would it be supposed that a New York merchant who employs such a drummer would be responsible if he carelessly breaks a chair in a hotel in Savannah because he has been told to go to Savannah and sell goods, which implies staying at a hotel? Or if he should carelessly set the hotel on fire while staying there in the prosecution of his business of canvassing, would this incident of hotel life during such journey under such control be construed to render the employer liable? Such responsibility would certainly not be asserted in any of the cases supposed above, but it will be said that those cases are not like this; and to sustain that statement the Court below pointed out that the canvasser "agrees to employ himself under the direction of the said Singer Manufacturing Company, and under such rules and instructions as it or their manager at Minneapolis shall prescribe." It

is respectfully suggested that a second look at this clause reveals, no reservation of control which would enable the employer to direct the canvasser in the particular *out of which the injury arose*—such as to go on a certain day or journey; or to ride, drive or walk; or that he should reject one horse and drive another; or that he should remedy a defect in his harness lest an accident might happen; or that he should drive fast or slow: nor the reservation of any power to reprove or correct or control him respecting the manner in which he should make the journey on which he ran over Miss Rahn.

When he has reached the customer the occasion for regulation, &c., may arise. It is manifest that the rules and instructions, and directions stipulated for had reference to the way in which the canvasser should present the merits of his machines, and contrast them with the demerits of other people's machines; to the claims and representations which he should make; to the guarantees, engagements, &c., which he should give; to inducements which he should hold out to persuade reluctant purchasers; in short, to all matters affecting his conduct to *the buyer as the seller's agent*, without reference to how he reached the buyer, whether by negligent or careful driving. These matters, through which the reputation of the company for fair dealing, and that of its machines, might be prejudiced, were subjects over which they reserved a right to restrain, direct or control the canvasser.

Such reservation of control is common in contracts—for instance, building contracts, without giving rise to the master and servant relation.

Considering the bearing of the 7th section of the contract upon the legal relation of Corbett and the plaintiff in error:

The section binds the company to furnish a wagon; and Corbett to furnish a horse and harness to be used exclusively in canvassing for the sale of machines and the general prosecution of that business. Corbett agrees to give his best energies to the business, and to pay all expenses.

Under these circumstances the loan of the wagon takes classification in the law only as a bailment.

Such bailments taken alone do not create a relation of master and servant between bailor and bailee.

Thus in Quarman vs. Burnett, 6 Meeson & Welsby, 407, the defendants owned a carriage, and hired of a livery keeper horses and driver to drive them. Held, not to make the driver defendants' servant, and not to make the defendants liable for an injury caused by the driver and team while so driving.

In Murry vs. Currie, L. T., Com. Pleas, 24, a ship owner allowed the stevedore to use his steam hoist in unloading the ship. This, however, did not make the stevedore the ship owner's servant nor the ship owner liable for injury happening in its use.

Stevens vs. Armstrong, 2 Seld. (N. Y., 435), is a similar case.

In Rapson vs. Corbett, 9 Meeson & Welsby, 709, the defendant bought a bullock, and hired a drover to drive it home. While so driven, it did damage; held, that defendant was not liable.

In Canter vs. Berlin Mills, 58 N. H., defendants contracted with T. to cut timber from defendant's land, to be delivered at the mouth of a certain river, T. to use defendant's dams, which he used to plaintiff's injury; and it was held that defendants not liable.

See also, Spraul vs. Hemmingway, 14 Pick., 1, where a steamboat was towing a brig. The brig ran into a schooner and injured it. Held, that the owner of the brig was not liable as it was inert, and the moving cause was the steamer, and the steamer's crew, not the servants of the owner of the brig.

In the English Hackney Cab cases (Powles vs. Hider, 6 E. & B., 207 ; Venables vs. Smith, 2 Q. B. D., 279, and King vs. Spurr, 8 Q. B. D., 104), the Courts held that the letting of a cab, or cab, horses and driver at a daily or weekly stipend did not create the relation of master and servant *at common law*, nor make the owner liable as a master, nor did it create the relation of master and servant, but that of bailor and bailee.

In Schular vs. Hudson River Railway Company, 38 Barb., 655, the Railway Company employed a contractor to pull their cars through the city with horses, the company reserving the right "to control the contractor or terminate the contract if the work was not done to the satisfaction of the defendant." It was held that the railroad was not liable to one injured by cars so moved.

From these cases it appears clear that the entrusting a wagon to Corbett did not tend to constitute him the company's servant, in respect of the use of that wagon ; and that any liability in the company for his acts, must find a source independent of this bailment.

It is claimed that this source is found in the reservation of control expressed in the eighth section.

The effect of similar stipulations subjecting a contractor to the direction, regulation and control of a co-contractor has often been considered by the Courts, and a rule arrived at which is aptly and correctly stated in the quotations from text books given above.

A few of the cases in which the principles applicable to the eighth section of this contract are laid down may, perhaps, be usefully cited as illustrations.

It will be seen that such control, etc., as is here reserved has not been regarded as indicating a master and servant relation—but, on the contrary, as being entirely consistent with a principal and agent, or co-contractor relation. In the following cases the general distinction

appears to be that he is a master (and subject to the doctrine of *respondeat superior*) who retains, and he is a servant (and capable to plead that maxim in defense) who surrenders, the right to determine the means or manner of accomplishing the object of the contract. He is a *principal* and not a *master* who retains the right to direct what *ends* shall be attempted, leaving the *means* to the management of the agent.

In Blake vs. Ferris, New York, 1 Seld., 48, a contract for the building of a sewer reserved a general supervision to the defendant's agent. This was held to mean a control of results, and not of means; and the defendants were not therefore liable.

In Pack vs. Mayor of N. Y., 4 Seld., 222, the city reserved the right for its officers to give further directions through its commissioners and City Surveyor.

In Kelly vs. Mayor, 1 Kernan, 432, in a contract for grading streets, it was provided "that the whole work "was to be done under the direction and to the entire "satisfaction of the commissioners of roads and sur- "veyors having charge of the work."

In all the following cases, clear reservation of control was held not sufficient to create the characteristic master's liability.

In Allan vs. Willard, 57 Penn. St., 382, work was contracted to be done "according to the plan and "under the direction and supervision of John Fraser, "architect of defendant."

In Painter vs. Mayor of Pittsburgh, 46 Penn. St., 213, the City of Pittsburgh contracted to have a sewer built by a contractor under the direction of the city officials.

Hunt vs. Pa. Railroad Co., 51 Penn. St., 475. A railroad company contracted with a builder to do the work of building "in accordance with the plans, speci- "fications and instructions furnished by the company" or such persons as they should appoint.

In Reed vs. Alleghany City, 79 Penn. St., 300, the

city contracted with Gwinner to grade, pave, &c., a street in accordance with the plans and specifications furnished by the city engineer under the direction and to the satisfaction of the city engineer, and Committee on Streets.

In the City of Erie vs. Caulkins, 85 Penn. St., 247, the city contracted with one to build a sewer, "all the work to be commenced and carried on at such times and in such places and in such manner as the engineer shall direct."

In Edmundson vs. Railway, 111 Penn. St., 316, the defendant's engineer had a general supervision of the job.

In Cuff vs. Newark Railway Company, 35 N. J. Law, 17, the company let a contract for excavating rock, but retained the supervision by their engineer—the right to discharge incompetent men was reserved and subletting was forbidden.

In Conner vs. Hennessy, 112 Mass., 96, a carpenter contracted to raise a house for defendant and complete the alterations to the satisfaction of the owner. See also Wood vs. Cobb *et al.*, 13 Allen, 58, where fish dealers hired draymen to deliver fish, and directed where the fish were to be delivered, but not how or by what route.

In Samuelson vs. Cleveland Iron Mining Company, 49 Mich., 164, the owner of the mine stipulated when renting it that when his tenants repaired the mine it should be under the supervision of his superintendent.

In Reedie vs. London Railway Company, 4 Ex. (Welshy, Hurl. & Gor.), 243. The defendant reserved the power to discharge the contractors' servants if incompetent.

In Steele vs. S. E. Railway Company, 16 Common Bench, 550. The defendant told its workman, Phillips, what to do, but not how to do it, and it was done under the superintendence of the company's surveyor who furnished the plans.

In respect of the stipulation by which the plaintiff in error engaged to supply to the canvasser a wagon, it must be understood that this was one way of making compensation to the canvasser ; and as bearing upon this point see Murray vs. Currie, L. T. Common Pleas 24, and Stevens vs. Armstrong, 2 Seld., 435.

Jones vs. Mayor of Liverpool, 14 Q. B. D., 890, 1885.

Various English hackney cab cases which might seem to be contrary will be found on examination to depend not upon common law principles but upon provisions of acts of Parliament.

Reference may be made generally to Sherman & Red on Negligence at page 96 ; also Sec. 77, 78, Hilliard on the Law of Torts, Vol. 2, p. 436 ; 2d. Am. Law Register, New Series, Vol. 3, p. 358.

Am. Law Review, Vol. 18, No. 4, pp. 635, 643, 644, 653.

5 Southern Law Review, 253, 258, 275, 282 and 285.

In the articles last cited may be found succinct accounts of the descent of this topic in the law from *Bush vs. Steinman*, in 1 Bos. & Puller, 404, to Hilliard vs. Richardson, in 3 Gray (approved in Chicago vs. Robbins, 2 Black., 428), where the Court, referring to the asserted doctrine, said : " * * * Bush vs. Steinman, when carefully examined, stands upon the general proposition that a person shall be answerable for any injury which arises in carrying into execution that which he has employed another to do—to adopt which would be to ignore all limitations of legal responsibility."

The simple proposition of the plaintiff in error being that it never employed or contracted with Corbett to drive a horse ; that his sole relation to it was that of an independent contractor to can-

vass for sales furnishing his own means; it is believed that any further discrimination of authorities under the law of master and servant, or principal and agent will be out of place.

The judgment should be reversed, and new trial ordered.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1889.

(No. 396.)

THE SINGER MANUFACTURING COMPANY,
Plaintiff in Error,

– against –

KATIE RAHN,
Defendant in Error.

In error to the Circuit Court of the United States for the District of Minnesota.

BRIEF OF DEFENDANT IN ERROR.

JOHN W. WILLIS,
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of Counsel.

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BRIEF FOR DEFENDANT IN ERROR.

I.

The judgment should be affirmed for failure of the plaintiff in error to comply with the fourth rule of this court.

The plaintiff in error excepted generally to a charge of the court below, covering more than a printed page of the transcript, (page 21) and containing several distinct propositions of law.

Such an exception presents no question for the determination of this court.

Refle vs. Wilson, 131 U. S., CLXXXIX.
Rogers vs. The Marshall, 1 Wall. 644.
Phoenix Life Ins. Co. vs. Raddin, 120 U. S. 183.
Lincoln vs. Claslin, 7 Wall. 132.
Railroad Co. vs. Varnell, 98 U. S. 479.

No other error than this one relating to the charge of the court having been assigned upon suing out the writ of error (transcript, page 27,) the exception to the court's refusal to charge cannot be urged here.

Rule 21, par. 4.

However, the judgment should be affirmed upon its merits.

The cause now to be reviewed by this court presents an interesting question, requiring for its proper determination an accurate application of the doctrine, *respondeat superior*. The issue is, however, plain and simple. It is this:

"Did the court, Nelson J., in his instruction to the jury before which the cause was tried at *nisi prius*, rightly construe the written contract entered into by the defendant and one Corbett (the immediate perpetrator of the injury upon which the action was based) as legally establish between the parties to such contract, the relation of master and servant?"

The defendant assigns this instruction as error. The plaintiff insists that the instruction was correct.

The charge given by the trial judge to the jury may be found upon pages 20–22 of the printed transcript of the record. The contract to which the charge refers is found upon pages 18–20 of the transcript.

The plaintiff in error does not raise any question as to whether the act complained of was negligent or careful, as to whether the act was committed by Corbett while acting within the scope of his employment, nor as to whether it was committed in the course of a violation of the orders of the defendant. All of these questions are eliminated.

We are merely called upon to consider the legal effect of the written contract construed by the lower court. That contract certainly made T. J. Corbett the servant of The Singer Manufacturing Company. The instrument is explicit in its terms. In it we find these provisions:

1. It was not a *job* which Corbett undertook to perform, but a *regular occupation*, to which he agreed "to give his exclusive time and best energies." *Vide* contract section 7.

2. Corbett received a *salary*, as is stated in the very heading of the signed contract.

3. Corbett's recompense was for *services*, not for a definite work or undertaking, *vide* contract Secs. 1 and 2, where this is specifically stated. And in section seven, he bound himself to devote all of his time to the sale of machines and "the general prosecution of said business."

4. He agreed to employ himself *under the direction* of the

company, and "under such rules and instructions" as its manager should give. *Vide* contract, sec. 8. He is, therefore, under the control of the company.

5. The wagon driven belonged to the company. *Vide* contract, section 7.

6. The company had a right to discharge him at any time. *Vide* contract section 12.

The defendant in error could, in this cause, simply cite to the court the admirable summary of decisions upon the liability of a master for the acts of a servant, found in chapter thirteen (13) of Wood's Master and Servant, and rely safely upon such citation. That chapter abundantly supports the doctrine contained in the charge of the learned judge of the Circuit Court.

In a leading article entitled "*respondeat superior*," prepared by that distinguished law-writer, Seymour D. Thompson, we find the law thus summarized.

"The maxim used to formulate the doctrine we are considering, *respondeat superior*, implies that the person sought to be charged must stand in the relation of *superior* to the person doing the wrongful act. The term servant, as used in this sense, is not, however, restricted to persons engaged in menial, or even in domestic, service. It is applicable to any relation in which, with reference to the matter out of which an alleged wrong has sprung, the person sought to be charged had the right to *control* the action of the person doing the alleged wrong. And this right to control appears to be the conclusive test by which to determine whether the relation exists. The right to control the conduct of another implies the power to discharge him from the service or employment for disobedience. And, accordingly, the power to discharge is said to be the test by which to determine whether the relation of master and servant exists.

Pawlet vs. Rutland, etc. R. Co., 28 Vt. 297
Michael vs. Stanton, 3 Hun. 462 S. C.
5 N. Y. S. C. (T. & C.) 634.
Fenton vs. Dublin Steam Packet Co., 8 Ad. and E. 835.
Dalyell vs. Tyrer, El. bl. & El. 906.
Blake vs. Ferris, 5 N. Y. 48.

It will, undoubtedly, be claimed on behalf of the plaintiff in error that this contract did not make Corbett its servant, but made him "an independent contractor".

In view of this claim, we cite from the article already mentioned the statement by Mr. Thompson of the law regarding the liability of the employer of an independant contractor, and his definition of an independent contractor:

"The general rule is, that one who has contracted with a competent and fit person, exercising an independant employment, to do a piece of work, not in itself unlawful or attended with danger

to others, according to the contractor's own methods, and without his being subject to control, except as to the results of his work, will not be answerable for the wrongs of such contractor, his subcontractors, or his servants, committed in the prosecution of such work. An independant contractor, within the meaning of this rule, is one who renders service in the course of an occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished."

And again: "The general test by which to determine whether the person who, by himself or his servant, committed the wrong was acting as the servant of the person sought to be charged, or as an independent contractor or undertaker, has already been adverted to. In every case the decisive question is: Had the defendant the right to control, in the given particular, the conduct of the person doing the work? On this question, the contract under which the work has been done must speak conclusively in every case, reference being had, of course, to surrounding circumstances."

5 Southern Law Rev.
Article Respondeat Superior.

The vexed question, "When and under what circumstances does the relation of the employer and independant contractor exist, and when and under what circumstances does the relation of master and servant exist"? is well answered and the whole subject ably elucidated in a leading article contributed to the American Law Review, by H. A. Harman, Esq, and printed on pages 635-673 of Volume XVIII. The article is entitled, "Liability of an employer for the wrongful Acts of Persons serving him in the course of an Independent Employment".

This case as it is here now is not related to that class of cases where the injury arises from the result contracted for and intended. Nor to those cases where the agent has gone outside of his master's business and engaged in some enterprise of his own.

As far as any questions of the character usually arising in these cases could arise in this case, they have been disposed of by the verdict of the jury.

The question here now is, did the contract in evidence make Corbett an independent contractor so that the plaintiff in error would not be liable for any acts of his committed while prosecuting the business mentioned in the contract.

It appearing that the injury was caused by Corbett while engaged in the company's business and while in its employ, it is incumbent upon the plaintiff in error to show that the contract between them was such as to absolve it from liability for Corbett's negligent acts. "But unless the charter party has interfered with the general control of the owners, they are clearly liable.

Fenton vs. City of Dublin Steam Packet Co. 8 Ad. & Eb. 835, 842.

"He clearly would be liable unless he had parted with the en-

tire control to Palmer, the contractor, and altogether abstained from the personal interference."

Burgess vs. Gray, 1 *C. B.* 578.
Schwartz vs. Gilmore, 45 *Ill.* 455.

The test question as it is above stated must be answered in the negative for two reasons :

(1) The contract was one for services and not for the performance of a particular piece of work. It was not a contract for "results".

(2) The plaintiff in error, did not by the terms of the contract part with the right to control the mode and manner of the work.

1. This contract is one for services and not for "results".

A. Its exact nature is to be determined largely by what Corbett agreed to do.

He agrees "to give his exclusive time and best energies to said business (of selling and leasing machines and collecting money) and pay all expenses attending the same."

He agrees "to employ himself under the direction of the said Singer Manufacturing company and under such rules and instructions as it or their manager at Minneapolis shall prescribe, and in all respects to comport himself to the best interests of the business of the said first party." (Transcript, page 19.)

This is his entire agreement as to the work to be done by him. And it must be true that this does not mention any "job", any particular piece of work the performance of which Corbett undertakes.

The company does not agree to furnish him any machines. He does not agree to sell any. He simply agrees to devote himself generally to one branch of the company's business.

B. The fact that he devotes his own time and that of his horse *exclusively* to the business of the company is inconsistent with the idea that he has contracted to do a particular and specified piece of work.

Regina vs. Turner, 11 *Cox. Cr. Cas.* 551.

In this case it was thought that the fact that the defendant was not allowed to make sales for persons other than the complaining witness was to be considered in determining whether a commercial traveller was "a clerk or servant" within the meaning of the statute against embezzlement.

C. To make the person a contractor and not a servant, there must be a contract to do a particular piece of work. Such a contract confers upon the contractor a legal right to finish the work.

And if he is deprived of this right by the employer he has his action against him. It would seem to follow that if the contract gave the employer the right to discharge the employed at any time without subjecting such employer to an action for damages, the contract must be one for services.

And it has accordingly been said in several cases that the extreme of the right to discharge determines the relation between the parties.

Fink vs. Missouri Furnace Co., 10 Mo. App. 61.
S. C. 82, Mo. 376.

From this contract it appears that Corbett was to devote his time exclusively to the business of the company, and that he could be discharged from its employment at any time. And while there might be an agreement under which the employed would be "an independent contractor", although he agreed to devote all of his time to the business of his employer, yet it is impossible to conceive of an agreement under which the employed would be "an independent contractor", where it not only was provided that he should devote his time exclusively to the business of his employer, but there was also a provision that he might be discharged at any time.

2. The plaintiff in error did not by the contract part with the right to control the mode and manner of the work.

If such right of control was not parted with, the plaintiff in error is liable.

"The relation of master and servant does not cease so long as the master reserves any control or right of control over the method or manner of doing the work or the agencies by which it is to be effected."

Speed vs. At. & P. R. Co., 71 Mo. 303.
Huff vs. Ford, 126 Mass. 24.

"The maxim, *respondeat superior*, depends upon the presumed control implied by the relation between the parties. It therefore does not extend to the case of an independent contractor to whom the execution of a work is committed without any control or power of direction being reserved on the part of the employer as to the manner of executing the work."

Carter vs. Borton Mills, 58 N. H. 52.

"The question in these cases whether the relation is that of master and servant or not is determined mainly by ascertaining from the contract of employment whether the employer retains the power of directing and controlling the work or has given it to the contractor."

Forsyth vs. Hooper, 11 *Allen* 419.
City of St. Paul vs. Seitz, 3 Minn. 297.

"A master is responsible for the atrocious acts of his servants which were done in his service. This responsibility grows out of, is measured by, begins and ends with, his control over them."

McGuire vs. Grant, 1 *Dutch 356.*

"Upon the principal *Qui facit per alium facit per se*, the master is responsible for the acts of his servant; and that person is undoubtedly liable who stood in relation of master to the wrong doer—he who has selected him as his servant from the knowledge of or belief in his skill and care, and who could remove him for misconduct, and whose orders he was bound to receive and obey."

Quarman vs. Burnett, 6 M. & W. 499, Parke, B.

So much seems to be conceded in all of the cases, but the difficulty arises when an attempt is made to determine from the contract whether or not the right of control had been parted with.

And it may be well to remark here that it is the possession of this right and not its exercise that is important.

Brackett vs. Lucke, 4 Allen, 138.
Campbell vs. Lunsford, 88 Ala. 512.

And whether that right is possessed or not is to be determined by an inspection of the contract of employment.

Forsyth vs. Hooper, 11 Allen, 419.

If nothing had been said in this contract on this subject, the character of the work was nevertheless such that the law would infer that the employer retained the power to control it.

Thus where there was a contract to repair an awning for the defendant with nothing said therein about control of the work, the defendant was held liable for the negligent act of the repairer.

Brackett vs. Lunke, 4 Allen, 138.

So where the defendant employed a common laborer to clean a drain.

Sadler vs. Henlock, 4 *El. & Bl. 70.*
Dalyell vs. Tyrer, El. Bl. & El. 899.
Blake vs. Thiarst, 2 H. & C. 20.

But in this case the contract by its terms gives to the employer the control of the work and of the mode and manner of its accomplishment.

It provides that "The said second party agrees to employ himself under the direction of the said Singer Manufacturing Company, and under such rules and instructions as it or their manager at Minneapolis shall prescribe." (Transcript, page 19.)

By the provisions of this contract "The general management and control of the work was reserved to the company. Its extent

in many particulars was not prescribed. How and in what manner the "work" was to be done "was not pointed out."

Railroad Company vs. Hanning, 15 Wall. 649, 657.

In the Hanning case, Michael Carvin agreed to furnish the timber, planking and iron work, and all the labor necessary for the rebuilding of the company's wharf—with such mooring posts, cluster piles for fenders every twenty feet, rows of piles on boundary lines, above and below slips and inclines, as the company thought their engineer may require, for the sum of $40 per square of one hundred square feet. The old wharf to be made as good as new, and the new wharf in the best workmanlike manner. It was also understood and agreed that the division engineer of the company should supervise and direct the work, and that it should be done to his satisfaction.

This court held that such a contract gave the company the right "to supervise the work to be done. They are to direct how it shall be done. This includes the power of controlling and managing the entire performance of the work within the general limits mentioned. It includes the possession of the wharf, the direction, management and control of all of the details of the work. It makes Carvin their agent and servant, receiving a larger or smaller compensation as they may expand or contract his work. The reservation of authority is both comprehensive and minute. The company have the general control, and it may prescribe where each pile shall go, where each plank shall be laid, where each stringer shall be put down, where each nail shall be driven. All the details are to be completed under their orders and according to their direction. The contractor undertakes in general terms to do the work well. The company reserve the power not only to direct what shall be done but how it shall be done. This is an important test of liability."

Railroad Co. vs. Hanning, 15 Wall, 648, 656, 657.

Considering the character of the work to be done by Corbett in the present case, the reservation of the right to control was not more ample in the Hanning case than in this case.

In the business of selling sewing machines there can be no direction unless it is a direction as to how the business shall be done.

Under the contract for taking down the exposition building in New Orleans, the owners were held liable for an injury inflicted by the carelessness of the contractors, because the contract provided that the work was to be done under the supervision of their architect. The court held that this gave the owners control over the method of doing the work.

Farren vs. Sellers, 39 La. An. 1011.

So where the contract for taking down the Adams house in Boston provided that it should be done "carefully and under the direction and subject to the approval of the trustees." The

trustees were held liable for an injury inflicted by the negligence of the contractor's servants.

Linnehan vs. Rollings, 137 *Mass.* 123.
City of Cincinnati vs. Stone, 5 *Oh. St.* 38.

Of the cases in Pennsylvania and elsewhere which are claimed to hold a contrary doctrine it may be said, first, that they do not agree as to the ground on which such ruling should be made.

For example in one case it was provided in the contract that "all of the work was to be commenced and carried on at such times and in such places and in such manner as the engineer shall direct". It was held that this clause did not impose liability on the city because the time when the work was to be done, the place where it was to be done, and the manner in which it was to be done, were all provided for specifically in the contract in other parts thereof, by which premises both parties were bound.

City of Erie vs. Caulkins, 85 *Penn. St.* 247.

In another case, it is said, that the engineer's power was limited to the manner of the accomplishment of the work and the time within which it should be finished, rather than to the means used.

Edmondson vs. Railway Co., 111 Penn. St. 316.

In another case the court says that the word "instructions" referred to the kind of structure, design, materials, combinations and all matters relating to the planning of the building to be erected. But as to the mode of accomplishing the work which the contractor undertook, he was left to his own skill and judgment.

Hunt vs. Penn. R. Co., 51 *Penn. St.* 475.

Many of these cases hold that the engineer has power to direct only as to the result of the work without any control over the manner of performing it.

Allen vs. Willard, 57 *Penn. St.* 374.

But it is probably of no consequence to inquire on what grounds these decisions were based, for so far as they announce any doctrines that differ from the rule laid down in the *Hanning* case this court cannot be guided by them. The Pennsylvania cases which had been decided at that time are referred to by this court in that case.

The fact that Corbett was paid by a commission on machines sold has no controlling force in coming to a decision here.

"If a person says to another carrying on an independent trade: "if you get any orders for me I will pay you a commission" and that person receives money and applies it to his own use he is not guilty of embezzlement for he is not a clerk or servant; but if a man says "I employ you and will pay you, not by salary, but by commission" then the person employed is a servant. And

the reason for such distinction is this, that the person employing has no control over the person employed as in the first case; but where as in the second instance, I have put, one employs another and binds him to use his time and service about his, the employer's business, then the person employed is subject to control. Here Farren agrees with Mr. Edwards that he shall and will from the date of the agreement, "act as the traveller of said Richard Edwards and diligently employ himself in going from town to town and soliciting orders." It is therefore clear that he was employed as a clerk or servant by Mr. Edwards who had full control over his time and services."

Regina vs. Turner, 11 *Cox. Cr. Cas.* 551.

The fact that the horse was owned by the agent is not material, since the injury was done while the agent was prosecuting the master's business.

Patten vs. Rea, 2 C. B., N. S., 605.

When a person who, by careless driving, inflicts an actionable injury has been intrusted by the owner with a *general discretionary control* of the vehicle which is the direct instrument of the injury, the vehicle being used by the person controlling it, in the service of and for the benefit of the owner, the owner of such vehicle is liable for such injury.

Venables vs. Smith, L. R. 2 Q. B. Div. 279.
Joslin vs. Grand Rapids Ice Co. 50 Mich. 516.
Mulvehill vs. Bates 31 *Minn.* 364.

This injury was caused by Corbett's personal act, while he was engaged in the business of the plaintiff in error "Who had selected him as its servant from the knowledge of or belief in his skill and care, and who could remove him for his misconduct, and whose orders he was bound to receive and obey". It is therefore "undoubtedly liable".

The judgment should be affirmed.

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